

37 Am. Jur. 2d Fraud and Deceit § 55

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Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

III. Means of Perpetration

C. Obtaining Goods or Services with Intent Not to Pay

§ 55. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 225](#) (Instruction to jury—Fraud in securing property—Purchase with intent not to pay)

It is an act of fraud to purchase or obtain goods with a preconceived intention not to pay for them,¹ and the same is true with purchasing or obtaining services.² To obtain goods on credit with the intent not to pay for them is as much a trick or device as it would be to falsely represent in words any material fact whereby the vendor would be induced to part with them.³

It is an act of fraud to procure money as a loan through a fraudulent scheme with the preconceived intention not to repay the loan.⁴

The rationale underlying the general rule has been stated as either that an application for credit is a representation of the existence of an intent to pay at a future time and a representation of the nonexistence of an intent not to pay⁵ so that the fraud consists in the express or implied false representation of such an intention, the promise being a false means whereby the fraud is effected.⁶ Other jurisdictions hold that the fraud consists in the concealment of the intention not to pay and that such concealment is conduct that reasonably involves a false representation of an existing fact, and that is not less material than a misrepresentation of the ability to pay and is an actual artifice, intended and fitted to deceive.⁷

False representations that will justify the rescission of a contract of sale and a concealment of an intention not to pay for the goods purchased are separate and distinct wrongs.⁸

Footnotes

- ¹ In re White, 221 F. Supp. 64 (N.D. Cal. 1963) (applying California law); Flaherty v. Schettino, 136 Conn. 222, 70 A.2d 151 (1949); Waller Peanut Co. v. Lee County Peanut Co., 209 S.W.2d 405 (Tex. Civ. App. Austin 1948).
- ² Erskine v. Chevrolet Motors Co., 185 N.C. 479, 117 S.E. 706, 32 A.L.R. 196 (1923); Hunt v. Lewis, 87 Vt. 528, 90 A. 578 (1914).
- ³ Kritzer v. Moffat, 136 Wash. 410, 240 P. 355, 44 A.L.R. 681 (1925).
- ⁴ Security Trust Co. of Rochester v. Voxakis, 67 Misc. 2d 143, 323 N.Y.S.2d 810 (Sup 1971).
- ⁵ Cerny v. Paxton & Gallagher Co., 78 Neb. 134, 110 N.W. 882 (1907); Waller Peanut Co. v. Lee County Peanut Co., 209 S.W.2d 405 (Tex. Civ. App. Austin 1948).
- ⁶ Cerny v. Paxton & Gallagher Co., 78 Neb. 134, 110 N.W. 882 (1907); Kritzer v. Moffat, 136 Wash. 410, 240 P. 355, 44 A.L.R. 681 (1925).
- ⁷ Erskine v. Chevrolet Motors Co., 185 N.C. 479, 117 S.E. 706, 32 A.L.R. 196 (1923).
- ⁸ German Nat. Bank of Ripon v. Princeton State Bank, 128 Wis. 60, 107 N.W. 454 (1906).

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